IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 175 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : D.D.SINHA AND R.V. MORE, JJ.

DATED : SEPTEMBER 14, 2006

Heard Shri Jibhkate, learned Counsel for the petitioner, Mrs. Dangre, learned Assistant Government Pleader for the respondent nos. 1 and 2, and Ms. Tiwari, learned Counsel for the respondent no.3.

The question, which falls for our consideration in the present petition, is whether rent, which is payable to the educational Institution by the Education Department can be included in the salary grant or non-salary grant.

Shri Jibhkate, learned Counsel for the petitioner, states that Clause 88.1 (A)(2) of the

Secondary Schools Code, which deals with rate of the non-salary grant, reads thus :

"(2) Rate of the non-salary grant :

Developmental Index of the School on preceding year	Percentage of Non-salary Grant limited to the expenditure on the salary of the
(A) 0 to 0.50	6%
(B) 0.51 to 0.75	9%
(C) 0.76 to 1.00	12%

It is submitted by the learned Counsel for the petitioner that Clause 2(a) of Schedule `A' to the Secondary Schools Code deals with rent and sub-clause (i) thereof contemplates reasonable rent for the School building provided the rent is actually paid and a certificate regarding reasonableness is obtained from the Executive Engineer. It is contended that in view of above referred provisions, rent is not included in the non-salary grant because criteria for fixing non-salary grant referred to hereinabove does not include rent and rent is required to be paid by the Education Department on the basis of certificate issued by the Executive Engineer.

It is further contended by the learned Counsel

for the petitioner that in the instant case, in view of direction of the School Tribunal, the Education Officer though entitled to pay salary to the respondent no.3 from the non-salary grant, if not paid by the Management, however, he is not entitled to deduct the amount of rent or the amount, which is due and payable towards rent and pay it to respondent no.3. It is submitted that the Education Officer has issued cheque of Rs.1,24,982/- to the respondent no.3 towards arrears of salary. It is contended that amount in question is due and payable towards rent to the School and since it cannot be included in the non-salary grant, such payment cannot be made by the Education Officer to the respondent no.3 and, therefore, appropriate directions in this regard may be issued.

Mrs. Dangre, learned Assistant Government Pleader for the respondent nos. 1 and 2, states that Clause 88.2 (a) of the Secondary Schools Code stipulates that salary grant would be paid in twelve monthly instalments whereas Clause 88.2 (b) provides that non-salary grant, which includes building rent, expenditure on contingencies on admissible items, etc. would be paid in two instalments. It is contended that since rent is included in non-salary grant in view of above referred provision, the respondent Education Officer is justified in issuing cheque in question as per

direction given by the School Tribunal as Management failed to pay arrears of salary to the respondent no.3.

We have considered the rival contentions canvassed by the respective Counsel and perused relevant provisions of the Secondary Schools Code. Perusal of Clause 88.1(A)(2) of the Secondary Schools Code clearly demonstrates that percentage of non-salary grant is limited to expenditure on salary of the preceding year and criteria thereof is also given. In the said criteria, payment of rent is not the basis for calculating entitlement of non-salary grant to the Institution. Similarly, Clause 2(a)(i) of Schedule `A' of the Secondary Schools Code demonstrates that reasonable rent for the School building is payable only on submission of certificate of the Executive Engineer by such School. In the circumstances, interpretation arrived at by the Education Officer so as to include building rent in the non-salary grant in that sense, in our view, is not justified. Consequently, act of issuance of cheque of Rs.1,24,982/- to the respondent no.3 by the Education Officer is not justified in view of above referred scheme. In the circumstances, respondent Education Officer is directed to withdraw the said cheque. However, respondent Education Officer is entitled to pay arrears of salary, which are due and payable to the respondent no.3, if they are not paid by

the Management, as directed by the School Tribunal, from the non-salary grant payable to the School. With these observations, the petition is disposed of.

JUDGE JUDGE

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